

AMENDED IN ASSEMBLY MAY 4, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 281

**Introduced by Assembly Member De Leon
(Coauthor: Assembly Member Conway)**

February 12, 2009

An act to add Article 2 (commencing with Section 5911) to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, relating to agriculture.

LEGISLATIVE COUNSEL'S DIGEST

AB 281, as amended, De Leon. Citrus disease prevention: California Citrus Disease Prevention Committee.

Existing law generally provides for the eradication of pests that threaten this state's agriculture. Existing law provides that there is in the Department of Food and Agriculture the California Citrus Advisory Committee, comprised as specified. The committee is required to develop and make recommendations to the Secretary of Food and Agriculture on all matters regarding the implementation of an inspection program, as provided.

This bill would create in the Department of Food and Agriculture the California Citrus Disease Prevention Committee, which would consist of 17 members (14 producers in the citrus fruit industry, 2 citrus nursery operators, and one public member) to be appointed by the Secretary of Food and Agriculture, as specified. The bill would set out the powers and duties of the committee, including, among others, the authority to

conduct, and contract with others to conduct, informational programs to educate residential owners of citrus fruit on the prevention of diseases or vectors specific to citrus and programs for surveying, detecting, and analyzing citrus diseases. The bill would provide for a monthly assessment, as provided and for specified related purposes, to be paid by producers, as defined, and remitted to the department and deposited into the Department of Food and Agriculture Fund. The bill would provide for a referendum voting procedure regarding the continued operation of these provisions.

Because this bill would impose assessment requirements on producers and handlers of citrus fruit, the violation of which would be a misdemeanor under other provisions of existing law, this bill would create a new crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 2 (commencing with Section 5911) is
2 added to Chapter 9 of Part 1 of Division 4 of the Food and
3 Agricultural Code, to read:

4
5 Article 2. Citrus Disease Prevention
6

7 5911. (a) The Legislature hereby finds and declares that the
8 citrus killing diseases, Huanglongbing, citrus leprosis, citrus
9 variegated chlorosis, and citrus canker, and the associated vectors
10 present a clear and present danger to California's citrus industry,
11 as well as to other commodities and plant life.

12 (b) This article is intended to establish an ~~industry-funded~~
13 *industry-funded* program to assist with the control of diseases and
14 vectors specific to citrus when found in California.

15 (c) This article is not intended to create new mandates or
16 circumvent state and federal authority on other agricultural
17 commodities.

1 (d) This article is not intended to establish a precedent, or to
2 supersede, or to reduce or in any way alter government funding
3 of the effort to combat citrus diseases and other pests in this state.

4 (e) The prevention and management of citrus diseases is affected
5 with the public interest. The provisions of this article are enacted
6 for the protection of the industry and in the exercise of the police
7 power of the state for the purpose of protecting the health, peace,
8 safety, and general welfare of the people of this state.

9 5912. Unless the context otherwise requires, the following
10 definitions shall govern the construction of this article:

11 (a) “Carton” means a unit equivalent to 40 pounds of citrus fruit.

12 (b) “Citrus” means “citrous” and any plants of the genera Citrus,
13 Fortunella, Poncirus, and all hybrids having one or more of such
14 as parents.

15 (c) “Citrus disease” includes any infectious, transmissible, or
16 contagious disease or vector infesting citrus trees.

17 (d) “Committee” means the California Citrus Disease Prevention
18 Committee.

19 (e) “Department” means the Department of Food and
20 Agriculture.

21 (f) “Districts,” except as otherwise provided in Section 5913,
22 consist of the following geographical areas:

23 (1) District 1 consists of all growing areas in San Bernardino
24 County and all other areas to the south, west, and east of San
25 Bernardino County that are not included in any other district.

26 (2) District 2 consists of all growing areas in the Counties of
27 Monterey, San Luis Obispo, Santa Barbara, and Ventura.

28 (3) District 3 consists of all growing areas in Kern County.

29 (4) District 4 consists of all growing areas in Tulare County.

30 (5) District 5 consists of all growing areas in Fresno County
31 and all other areas to the north that are not included in any other
32 district.

33 (g) “Handler” means a person or entity who receives citrus fruit
34 from a producer and who prepares the citrus fruit for fresh market.

35 (h) “Marketing season” begins October 1 of each year and ends
36 September 30 of the next year.

37 (i) “Person” means a producer, handler, or any other entity that
38 holds title to citrus fruit subject to assessment.

39 (j) “Producer” means any person in this state who is a grower
40 of citrus fruit, but does not include a citrus nursery.

1 (k) "Secretary" means the Secretary of Food and Agriculture.

2 5913. (a) There is hereby created in the department the
3 California Citrus Disease Prevention Committee.

4 (b) The committee shall be composed of 17 members. Fourteen
5 producer representatives shall be appointed by the secretary from
6 nominations received from each district. District representation
7 shall be determined by the secretary on a proportional basis equal
8 to the production history of each district for the previous two years.

9 The secretary shall also strive to appoint producers representing
10 the different varieties of citrus fruit produced in California,
11 including, but not limited to, oranges, lemons, and grapefruit.

12 (c) One member shall be a public member, appointed by the
13 secretary from the nominees recommended by the committee.

14 (d) Two members shall be citrus nursery operators, one
15 representing northern California, defined as counties in the San
16 Joaquin Valley and north but not including counties on the coast
17 who shall be represented by a southern California designee, and
18 one representing southern California, appointed by the secretary
19 from the nominees recommended by the committee.

20 (e) (1) The initial members of the committee shall be appointed
21 within 30 days of the enactment of this article. The members shall
22 serve staggered terms. The terms of the members of the committee
23 shall expire as follows:

24 (A) Two members on September 30, 2010.

25 (B) Five members on September 30, 2011.

26 (C) Five members on September 30, 2012.

27 (D) Five members on September 30, 2013.

28 (2) The members of the committee shall allocate the initial terms
29 among themselves by lot or other method.

30 (f) Appointments to the committee shall be for terms of five
31 years. Vacancies shall be immediately filled by the secretary based
32 on recommendations from the committee for the unexpired portion
33 of the terms in which they occur.

34 (g) The secretary and other appropriate individuals, as
35 determined by the committee, shall be nonvoting ex officio
36 members of the committee.

37 (h) Committee members may be compensated for reasonable
38 expenses actually incurred in the performance of their duties, as
39 determined by the committee and concurred in by the secretary.

1 (i) The committee shall meet at the request of the secretary, the
2 committee chairperson, or upon the request of three committee
3 members.

4 (j) The committee shall appoint a chairperson, one or more vice
5 chairpersons, and any other officers it deems necessary.

6 (k) The Legislature finds and declares that persons appointed
7 to the committee are intended to represent and further the interests
8 of the citrus industry, and that this representation and furtherance
9 is intended to serve the public interest. Accordingly, the Legislature
10 finds that, with respect to persons who are appointed to the
11 committee, the citrus industry is tantamount to, and constitutes,
12 the public generally within the meaning of Section 87103 of the
13 Government Code.

14 5914. (a) The powers and duties of the committee are limited
15 to activities involving the producers of citrus fruit and residential
16 owners of citrus fruit.

17 (b) The committee may do all of the following:

18 (1) Conduct, and contract with others to conduct, either or both
19 of the following:

20 (A) Informational programs to educate residential owners of
21 citrus fruit on the prevention of diseases or vectors specific to
22 citrus.

23 (B) Programs for the surveying, detecting, and analyzing of
24 diseases specific to citrus involving producers of citrus fruit and
25 residential owners of citrus fruit.

26 (2) Take by grant, purchase, gift, devise, lease, or otherwise and
27 hold, use and enjoy, and lease, or otherwise dispose of, real and
28 personal property of every kind and description necessary to the
29 full and convenient exercise of the committee's powers.

30 (3) Cause fees to be levied, as provided in Section 5918, to pay
31 any obligation of the committee and to accomplish the purposes
32 of the committee in the manner provided in this article.

33 (4) Make contracts, and employ, except as otherwise provided
34 in this article, all persons, firms, and corporations necessary to
35 carry out the purposes and the powers of the committee, and at
36 any salary, wage, or other compensation as the committee shall
37 determine.

38 (5) Perform any and all acts either necessary or proper to fully
39 and completely carry out the purposes for which the committee
40 was organized.

1 (6) Recommend to the secretary the adoption of regulations
2 consistent with the powers and duties of the committee.

3 (c) The committee shall not engage in any activity deemed by
4 the secretary to be contradictory to any eradication program or
5 quarantine implemented to address citrus diseases or related
6 vectors.

7 *(d) For any program or activity occurring pursuant to this*
8 *section that overlaps with the department's programs or activities,*
9 *the department shall be the lead agency.*

10 5915. (a) Upon receipt of a recommendation from the
11 committee for the adoption of regulations, the secretary shall do
12 one of the following within 30 working days:

13 (1) Initiate the rulemaking process to adopt the recommendation
14 of the committee.

15 (2) Decline to initiate the rulemaking process and provide the
16 committee with a written statement of reasons for the decision.

17 (3) Request the committee to provide additional information
18 regarding the recommended regulations.

19 (b) All regulations adopted pursuant to this article shall be
20 adopted in compliance with the Administrative Procedure Act
21 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
22 Division 3 of Title 2 of the Government Code), and may be
23 subsequently repealed or amended as provided for in that act.

24 5916. No member or agent of the committee shall be personally
25 liable for the actions of the committee or the department. No
26 member or agent of the committee is responsible individually in
27 any way to any other person for errors in judgment, mistakes, or
28 other acts, by either commission or omission, as a principal, agent,
29 or employee except for his or her own individual acts of dishonesty
30 or crime. No member or agent of the committee is responsible
31 individually for an act or omission of any other member or agent
32 of the committee or the department. Liability is several and not
33 joint, and no member or agent of the committee is liable for the
34 default of any other member or agent of the committee or the
35 department.

36 5917. The committee shall reimburse the secretary for all
37 expenditures incurred by the secretary in carrying out his or her
38 duties and responsibilities pursuant to this article.

39 5918. (a) During the first marketing season, beginning
40 February 1, 2010, and ending September 30, 2010, the monthly

1 assessment to be paid by producers shall be one cent (\$0.01) per
2 carton. Thereafter, in addition to any other assessments, fees, or
3 charges that may be required pursuant to this code, producers shall
4 pay a monthly assessment established by the committee that shall
5 not exceed seven cents (\$0.07) per carton. The assessment shall
6 be:

7 (1) Based on the number of 40-pound carton equivalents
8 produced.

9 (2) Used to purchase equipment for detecting citrus diseases,
10 testing citrus trees, fruit, and vectors, and controlling citrus
11 diseases, and for contracting with labs to conduct citrus disease
12 testing.

13 (3) Collected from the producer by the first handler. If a
14 producer prepares the citrus fruit for market, the producer shall be
15 deemed the handler.

16 (4) Remitted to the department by the first handler, along with
17 an assessment form, at the end of each month during the marketing
18 season.

19 (5) Deposited in the Department of Food and Agriculture Fund
20 or, upon the recommendation of the committee, deposited in
21 accordance with Section 227 or Article 2.5 (commencing with
22 Section 230) of Chapter 2 of Part 1 of Division 1.

23 (b) The committee may recommend to the secretary an
24 assessment less than the amount specified in subdivision (a) or no
25 assessment if no disease prevention program is necessary or if
26 there is sufficient reserve to operate the program.

27 5919. (a) Upon establishment of a disease prevention program,
28 any handler who does not file the required monthly assessment
29 form and assessments by the 10th day of the month following the
30 month for which the assessment is payable shall pay a penalty of
31 10 percent of the assessment owed and, in addition, 1 ½ percent
32 interest per month on the unpaid balance.

33 (b) Upon establishment of a disease prevention program, it shall
34 be unlawful for any handler to refuse to collect the assessments or
35 remit the assessments and the proper forms required by this article.

36 5920. (a) Beginning in the 2016–17 marketing year, the
37 secretary shall hold one or more public hearings to determine
38 whether the operation of this article should be continued. The
39 secretary may waive referendum under this article if, following a
40 hearing, the secretary determines there is no substantial question

1 of opposition to doing so among affected assessment payers.
2 Thereafter, the secretary shall conduct the review process every
3 four years.

4 (b) As used in this section, “substantial question of opposition”
5 means opposition to the substance of the petition among currently
6 affected assessment payers, and is not intended to mean a particular
7 number of assessment payers.

8 5921. (a) If the secretary finds after the hearing that a
9 substantial question exists among affected payers under this article
10 regarding whether the operation of this article should be continued,
11 the secretary shall submit the article for approval utilizing the
12 following voting procedures set forth in this section and Sections
13 5922 to 5927, inclusive.

14 (b) Within 90 days of the secretary determining the requirement
15 for referendum has been met, the secretary shall establish a list of
16 those persons eligible to vote on the continued implementation of
17 this article.

18 (c) Eligibility shall be limited to the persons who paid the
19 assessment on citrus fruit in the immediately preceding marketing
20 season.

21 (d) (1) In establishing the list, the secretary may require
22 handlers, producers, and others to submit the names, mailing
23 addresses, and assessment values of all producers who paid the
24 assessment on citrus fruit in the immediately preceding marketing
25 season.

26 (2) The information required by the secretary shall be filed either
27 with the monthly assessment form or no later than 30 days
28 following receipt of a written notice from the secretary requesting
29 the information.

30 (e) Any producer whose name does not appear on the secretary’s
31 list may have his or her name added to the list by filing with the
32 secretary a signed statement identifying himself or herself as a
33 producer that paid an assessment during the most recent marketing
34 season.

35 5922. For the purpose of voting in the referendum required in
36 Section 5921, only a person required to pay the assessment
37 pursuant to Section 5918 shall have the right to vote.

38 5923. In determining whether this article shall become
39 inoperative, the secretary shall find that at least 40 percent of the
40 total number of persons from the list established by the secretary

1 participated in the referendum, and that either one of the following
2 occurred:

3 (a) Sixty-five percent or more of the persons who voted in the
4 referendum voted in favor of this article, and the persons who
5 voted paid a majority of the assessment dollars on citrus fruit in
6 the preceding marketing season that were paid by all the persons
7 who voted in the referendum.

8 (b) A majority of the persons who voted in the referendum voted
9 in favor of this article, and the persons who voted paid 65 percent
10 or more of the assessment dollars on citrus fruit in the preceding
11 marketing season that were paid by all the persons who voted in
12 the referendum.

13 5924. In determining whether the referendum is approved by
14 producers pursuant to the provisions of this article, the secretary
15 shall consider the vote in favor of the referendum of any nonprofit
16 agricultural cooperative marketing association, which is authorized
17 by its members so to assent, as being the assent, approval, or favor
18 of the producers that are members of, or stockholders in, that
19 nonprofit agricultural cooperative marketing association.

20 5925. The secretary shall establish a period in which to conduct
21 the referendum that shall not be less than 10 days nor more than
22 60 days in duration. The secretary may prescribe additional
23 procedures to conduct the referendum. If the initial period
24 established is less than 60 days, the secretary may extend the
25 period. However, the total referendum period may not exceed 60
26 days.

27 5926. Nonreceipt of a ballot shall not invalidate a referendum.

28 5927. (a) If the secretary finds that a favorable vote has not
29 been given as provided in this article, this article shall become
30 inoperative within one year of the referendum.

31 (b) If the secretary finds that a favorable vote has been given
32 as provided in this article, he or she shall certify and give notice
33 of the favorable vote to all persons whose names and addresses
34 may be on file with the secretary as provided in Section 5921.

35 SEC. 2. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

O